



Rep. Monique D. Davis

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09800HB0821ham003

LRB098 03649 RLC 44799 a

1 AMENDMENT TO HOUSE BILL 821

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 821 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Unified Code of Corrections is amended by  
5 changing Section 5-5-4 as follows:

6 (730 ILCS 5/5-5-4) (from Ch. 38, par. 1005-5-4)

7 Sec. 5-5-4. Resentences.

8 (a) Where a conviction or sentence has been set aside on  
9 direct review or on collateral attack, the court shall not  
10 impose a new sentence for the same offense or for a different  
11 offense based on the same conduct which is more severe than the  
12 prior sentence less the portion of the prior sentence  
13 previously satisfied unless the more severe sentence is based  
14 upon conduct on the part of the defendant occurring after the  
15 original sentencing. If a sentence is vacated on appeal or on  
16 collateral attack due to the failure of the trier of fact at

1 trial to determine beyond a reasonable doubt the existence of a  
2 fact (other than a prior conviction) necessary to increase the  
3 punishment for the offense beyond the statutory maximum  
4 otherwise applicable, either the defendant may be re-sentenced  
5 to a term within the range otherwise provided or, if the State  
6 files notice of its intention to again seek the extended  
7 sentence, the defendant shall be afforded a new trial.

8 (b) If a conviction or sentence has been set aside on  
9 direct review or on collateral attack and the court determines  
10 by clear and convincing evidence that the defendant was  
11 factually innocent of the charge, the court shall enter an  
12 order expunging the record of arrest from the official records  
13 of the arresting authority and order that the records of the  
14 clerk of the circuit court and Department of State Police be  
15 sealed until further order of the court upon good cause shown  
16 or as otherwise provided herein, and the name of the defendant  
17 obliterated from the official index requested to be kept by the  
18 circuit court clerk under Section 16 of the Clerks of Courts  
19 Act in connection with the arrest and conviction for the  
20 offense but the order shall not affect any index issued by the  
21 circuit court clerk before the entry of the order.

22 All records sealed by the Department of State Police may be  
23 disseminated by the Department only as required by law or to  
24 the arresting authority, the State's Attorney, the court upon a  
25 later arrest for the same or similar offense, or for the  
26 purpose of sentencing for any subsequent felony. Upon

1 conviction for any subsequent offense, the Department of  
2 Corrections shall have access to all sealed records of the  
3 Department pertaining to that individual.

4 Upon entry of the order of expungement, the clerk of the  
5 circuit court shall promptly mail a copy of the order to the  
6 person whose records were expunged and sealed.

7 (c) If a conviction has been vacated as a result of a claim  
8 of actual innocence based on newly discovered evidence made  
9 under Section 122-1 of the Code of Criminal Procedure of 1963  
10 or Section 2-1401 of the Code of Civil Procedure, and the  
11 provisions of paragraphs (1) and (2) of subsection (g) of  
12 Section 2-702 of the Code of Civil Procedure are otherwise  
13 satisfied, the court shall enter an order for a certificate of  
14 innocence.

15 (Source: P.A. 93-210, eff. 7-18-03.)".